

Owners' Views and Sunlight Obstructed by Hedges - What can you do?

It is common for owners or owners corporations to have disagreements about how to deal with a hedge on a neighbour's property that is obstructing views (such as water views) or sunlight.

These issues are primarily addressed under the Tree (Disputes Between Neighbours) Act 2006 (NSW) ("TDA"), though there are circumstances where the TDA may not be applicable.

Process under the Tree (Disputes Between Neighbours) Act 2006 (NSW)

The TDA provides a generally simple and inexpensive process for people to address these disputes which includes Court orders if the parties cannot reach agreement. This is adjudicated by the Land and Environment Court ("LEC") through this relatively simplified process rather than more complex and costly actions through other Courts.

The process is generally as follows:

1. Notice

The affected person must give 21 days' notice to the owner of the "adjoining land" on which the hedge is located ("Hedge Owner"). The notice must detail the orders that will be sought if the matter proceeds to the LEC. This notice may also need to be given to the local municipal council and/or the Heritage Council in certain circumstances.

2. Period to reach agreement

During the notice period, it is open to the Hedge Owner to contact you to advise that they agree to the proposed terms, or to attempt to reach some other agreement to resolve the matter. If this process succeeds, it may not be necessary to proceed to the next steps.

3. Application to Land and Environment Court

If the Hedge Owner and you have not reached an agreement, then after the notice period has expired you may make an application to the LEC for orders to resolve the matter.

4. Land and Environment Court process

The LEC will give notice to the parties. A hearing under the TDA is less formal and expensive than many other court proceedings.

The TDA sets out a range of matters that the LEC needs to be satisfied with before making orders, including that you have made a reasonable effort to reach agreement with the Hedge Owner, and that the hedge is severely obstructing sunlight to your window or view.

The TDA also sets out a range of matters that the LEC must consider before making orders. These largely relate to the relevant circumstances, important considerations, and options for resolving the dispute.

Orders the LEC can grant include for certain actions to be taken (such as for the hedge to be pruned or removed, maintained at a specific height, width or shape or for the trees in the hedge to be replaced with a different species etc.), and for the payment of costs associated with carrying out an order by the LEC.

Additional points to note:

1. Qualifications and exclusions

The LEC can only hear hedge disputes if:

- There are 2 or more trees standing together to form a hedge which have been planted (not self-seeded) and have risen to a height of at least 2.5 metres (above existing ground level).
- The hedge is on privately owned land in an urban zoned area to which the TDA applies.
- The hedge is on land adjoining the land of the neighbour who is affected by the hedge.
- The hedge is severely obstructing sunlight to a window of a dwelling situated on the affected neighbour's land or severely obstructing a view from the dwelling situated on the affected neighbour's land.
- The affected neighbour has a right to apply (eg. you must be an owner or occupier of land that adjoins the land on which the hedge is situated).
- There must be a view that has become severely obstructed by the hedge. The LEC will not make an order to allow an owner to gain a view that he/she never had in the first place.

The TDA contains exclusions in relation to certain trees or hedges it does not apply to, which include:

- Trees or hedges on Council land; and
- Trees or hedges that may be prescribed to be excluded by regulations under the TDA.

There are also other exclusions, such as trees or hedges on Crown land in certain circumstances.

2. No action in nuisance

If the TDA applies to a hedge, then you cannot make a claim under the common law action of nuisance with respect to the obstruction of sunlight or views. It is intended that the matter should be dealt with under the simplified process under the TDA.

3. Meaning of “adjoining land”

The term “adjoining land” in NSW may apply in certain circumstances where the hedge is principally located on land that is not necessarily abutting the affected neighbour’s land. For example, it may apply even where the two lands are separated by a public reserve.

4. Action against your local Council

Orders under the TDA cannot be made in relation to hedges on Council land and the hedge must be wholly or principally located on the adjoining land. This means however that the restriction on bringing an action in nuisance do not apply. You may therefore consider an action in negligence against Council.

Notwithstanding the above, there are significant limitations on bringing actions against Councils, meaning that in some circumstances you cannot bring an action against Council even though you would be able to do so against a private person in the same circumstances.

If you cannot reach an agreement with Council and have a basis to make a claim, then you may have to abandon your claim, or having to use the standard litigation process which is usually more costly and complex.

Relevant Cases:

Table of Cases	
For	Against
<u>Davies v Christie [2011] NSWLEC 1324</u> The applicants sought orders from the LEC for the respondent’s bamboo in the adjoining property to be cut and maintained at a height of 3m on the basis that it severely obstructs sunlight to their dwelling. The LEC ordered the bamboo to be pruned.	<u>Hunt v Troy [2011] NSWLEC 1148</u> The applicants sought orders from the LEC for the trimming of hedges on the respondent's land in order to regain water views and to prevent the obstruction of sunlight to the windows in the dining and living area. The LEC dismissed the application.
<u>Knox v Love [2011] NSWLEC 1257</u> The applicant, inter alia, sought orders for the pruning of a hedge of mixed species growing on the respondents' property, and the ongoing maintenance of the hedge at a given height, on the basis that it was obstructing sunlight to the windows of his dwelling. The LEC ordered the respondents to prune the hedge to a height of no greater than 3 metres above ground level (measured from the base of each tree) and to maintain the hedge at a height of no greater than 3.3 metres above ground level (measured from the base of each tree).	<u>Barnes v Loveridge; Unicom v Loveridge [2016] NSWLEC 1108</u> The applicants sought orders from the LEC to remove 14 Kentia Palms from the northern boundary of the respondent’s property and the restriction of any subsequent replacement planting to a height of 3m, being the height of the eaves of the cottage. The first applicant, Mr Barnes argued that the palms severely obstructed both views from his dwelling and sunlight to the windows of his dwelling. The second applicant, Ms Unicom contended that the palms severely obstructed views from her dwelling. The LEC dismissed Mr Barnes and Ms Unicom’s applications.
<u>Taylor & anor v Smith & anor [2014] NSWLEC 1088</u>	<u>Butler v Taylor & anor [2016] NSWLEC 1427</u> The applicant sought orders from the LEC to remove 5 nominated plants on the respondent’s

<p>The applicants sought orders from the LEC for the twice yearly pruning of the Leyland Cypress and a pot of bamboo to a height of 1.2m above the top of the dividing fence on the basis that the trees were severely obstructing sunlight to the windows of the applicants' dwelling and severely obstructing views from their dwelling. The LEC ordered that the row of Leyland Cypress trees be pruned to a height of 1.5 metres above the timber fence.</p>	<p>property on the basis that they were severely obstructing sunlight to several windows on the eastern side of the applicant's dwelling. The LEC dismissed the application.</p>
<p><u>Karam v Meredith [2012] NSWLEC 1114</u> The applicant sought orders from the LEC for the removal of trees, or in the alternative, the pruning of the trees to a height sufficient to prevent obstruction of views. The orders were sought on the basis that the trees severely obstruct views from the applicant's dwelling and sunlight to the windows of her dwelling. The LEC found that the trees had severely obstructed the views of the applicant and ordered for the removal and replacement of a large tree with another more suitable type of tree.</p>	<p><u>Lutze v Graham & anor [2012] NSWLEC 1075</u> The applicant sought orders from the LEC for the pruning of a row of 6 Leyland Cypress trees to the height of the first floor windowsill of her dwelling on the basis that the trees were severely obstructing sunlight to windows of the applicant's dwelling and obstructing views from her dwelling. The LEC dismissed the application.</p>
<p><u>Lynch v Singleton [2018] NSWLEC 1008</u> The applicant sought orders from the LEC for orders to prune various trees on the adjoining land on the basis of that the trees were severely obstructing sunlight and obstructing views from the applicant's dwelling. The LEC ordered that the hedge to be pruned to a height of 3.5 metres above ground level between 1 March 15 March each year.</p>	<p><u>Smyth v Hayim [2012] NSWLEC 1318</u> The applicant sought orders from the LEC to remove a row of bamboos growing on an adjoining property on the basis that they were obstructing sunlight to the lounge room and kitchen area of the applicant's dwelling throughout the day. The LEC dismissed the application.</p>

A word of caution:

Whilst the process under the TDA is a simplified process, please note that you cannot go back for a second chance just because you are not happy with the outcome. Therefore, you need to make sure you put your best case forward the first time around. Even with this simplified process it is wise to get legal advice if you want to achieve the best results.

If you find yourself in such a property dispute, feel free to reach out for some advice, assistance and representation from our North Sydney Boundary Dispute Lawyers.

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